

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
. .
W.R. GRACE & CO., . USX Tower - 54th Floor
et al., . 600 Grant Street
. Pittsburgh, PA 15219
Debtors. .
. April 19, 2007
. 10:11 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Kirkland & Ellis, LLP
By: JAMES J. RESTIVO, ESQ.
LAWRENCE FLATLEY, ESQ.
DOUGLAS CAMERON, ESQ.
TRACI S. REA, ESQ.
Aon Center
200 East Randolph Drive
Chicago, IL 60601

Pachulski, Stang, Ziehl, Young,
Jones & Weintraub, P.C.
By: TIMOTHY CAIRNS, ESQ.
JAMES E. O'NEILL, ESQ.
919 North Market Street
17th Floor
P.O. Box 8705
Wilmington, DE 19899
(telephonic appearances)

Audio Operator: Cathy Younker

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd.):

For David T. Austern,
Claims Rep:

Orrick, Herrington & Future
Sutcliffe, LLP
By: DEBRA FELDER, ESQ.
Washington Harbour
3050 K Street, N.W.
Washington, DC 20007
(telephonic appearance)

For Official Committee of
Property Damage Claimants:

Bilzin Sumberg Baena Price
& Axelrod LLP
By: SCOTT L. BAENA, ESQ.
JAY M. SAKALO, ESQ.
Wachovia Financial Center
200 South Biscayne Boulevard
Suite 2500
Miami, FL 33131
(telephonic appearances)

For Official Committee of
Asbestos Property Damage
Claimants:

Ferry, Joseph & Pearce, P.A.
By: THEODORE J. TACCONELLI, ESQ.
824 Market Street
Suite 904
P.O. Box 1351
Wilmington, DE 19899
(telephonic appearance)

For Property Damage
Claimants:

Speights & Runyan
By: DANIEL A. SPEIGHTS, ESQ.
200 Jackson Avenue East
Hampton, SC 29924
(telephonic appearance)

For State of California:

Hahn & Hessen LLP
By: STEVEN J. MANDELSBERG, ESQ.
488 Madison Avenue
14th and 15th Floor
New York, NY 10022
(telephonic appearance)

APPEARANCES (Cont'd.):

For Kenneth Thomas:

KENNETH THOMAS

For Fireman's Fund
Insurance Company:

Stevens & Lee
By: DAVID R. BEANE, ESQ.
111 North Sixth Street
P.O. Box 679
Reading, PA 19603

For American Legion:

Motley Rice LLC
By: ANNE M. KEARSE, ESQ.
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

1 THE CLERK: All rise.

2 THE COURT: You may be seated. This is the matter of
3 W.R. Grace, bankruptcy number 01-1139 pending in the District
4 of Delaware. I have a list of participants by telephone for
5 this status conference concerning property damage claims.
6 Timothy Cairns, James O'Neill, Steve Mandelsberg, Kenneth
7 Thomas, David Beane, Debra Felder, Theodore Tacconelli, Anne
8 Kearse, Daniel Speights, Scott Baena, and Jay Sakalo. I
9 believe that is everyone. Good morning.

10 MR. RESTIVO: Good morning, Your Honor. In the
11 courtroom is James Restivo, Lawrence Flatley, Douglas Cameron,
12 and Traci Rea for the debtors.

13 THE COURT: Yes, Mr. Restivo, I don't have an agenda,
14 so I'm not sure exactly what we're going to have a conference
15 about, but if you'll tell me, I'd be pleased to know.

16 MR. RESTIVO: Thank you, Your Honor. First I'd like
17 to start by correcting an error that we made. Your Honor may
18 recall that at the summary judgment arguments Ms. Rea argued on
19 16 statute of limitations cases, but the number 16 included
20 three Mr. Dies' cases, included a couple cases the Court
21 expunged as not being a Grace product, and so we ask for
22 permission to submit a proposed order on the remaining 9 cases,
23 because the order we submitted didn't make any sense. There
24 weren't 16 anymore. We submitted it incorrectly, Your Honor,
25 under a COC, and the Court inadvertently signed the order

1 dismissing the claims, and so I have an order vacating the
2 April 17, 2007 order which was filed at docket number 15232
3 that I would hand up to the Court to correct the error we
4 caused the Court to make.

5 THE COURT: All right. Thank you.

6 (Pause)

7 THE COURT: All right. So this is going to reinstate
8 those 9 claims.

9 MR. RESTIVO: Yes, it is. Now, the Court has those
10 claims under submission, but the order we submitted took away
11 from the Court having it under submission, and I apologize to
12 Mr. Speights. It was just an error on our part.

13 THE COURT: Okay, Mr. Speights, I'm signing this
14 order that will reinstate those 9 claims? Mr. Speights?

15 MR. SPEIGHTS: Thank you, Your Honor.

16 THE COURT: Okay. Thank you.

17 MR. RESTIVO: Your Honor, I'm going to report that I
18 believe the parties have made good progress in reducing the
19 buildings in dispute that we will be trying on product
20 identification next week. The progress has made the status a
21 little confusing. I hope the Court will conclude after I
22 explain things that, in fact, this is good confusion. I want
23 to hand up to the Court what we're going to be trying.

24 THE COURT: Thank you.

25 MR. RESTIVO: For counsel on the telephone line, what

1 I have handed up to the Court is the debtors' updated
2 submission of asbestos PD claims in the order to be adjudicated
3 at the April 23-25 product identification hearing, but the one
4 I have handed up to the Court is different from the one counsel
5 has in that with respect to Canadian claims, the number of
6 claims now to be tried has been reduced from 14 to 7. And I'll
7 explain that as follows, Your Honor.

8 Originally, Your Honor, when we filed our original
9 papers, we were going to be trying 43 of Mr. Speights' Canadian
10 claims on product identification grounds. Through discussions
11 with Mr. Speights he and I have agreed that 12 of those claims
12 are going to be withdrawn, and I am dropping objections to two
13 of those claims. And in what I've handed up to Your Honor you
14 will see in boldface the two where we are withdrawing our
15 objections. That's 11678 and 12304.

16 And the 5 that are to be withdrawn by Mr. Speights,
17 that's 12305, 306, 307, 310, and 316. Mr. Speights and I are
18 still talking about the remaining 7 Canadian buildings. We're
19 going to talk more today, but at the present time we're down to
20 7 Canadian buildings.

21 You will see, Your Honor, on what I have handed up a
22 reference to a number of buildings in Canada, namely, 22, and
23 later 3 United States buildings represented by Mr. Speights
24 where we have indicated that the product identification hearing
25 on those buildings is to be deferred. What this is, Your

1 Honor, is that at Volume 3 of 7 of the court binders at Number
2 5, you have a motion by Mr. Speights to extend the deadlines on
3 26 claims. Most of those are Canadian. Three are U.S. claims.
4 Mr. Speights takes the position that the objections filed by
5 Grace did not include the product I.D. objections we are
6 raising, and I believe he takes the position that Grace has
7 somehow waived any product I.D. objections.

8 We vehemently disagree with that position, but Mr.
9 Speights and I have agreed, assuming the Court does not object,
10 that we will try those claims -- it will only take us one day
11 or less -- either on May 8 or May 9 or May 10, which the Court
12 I believe still has reserved for us, after the Court hears both
13 sides argue this waiver motion and tells us whether we have
14 waived our objection and can't raise product I.D. or not.
15 Since the Court will see in a moment that we will not need all
16 three days next week for our product I.D. trial given the
17 reductions that have been made, I will, when I'm done with my
18 remarks, suggest to the Court that perhaps we find some
19 available time on April 23, so that Mr. Speights and I can
20 argue this waiver issue before Your Honor, but I will come back
21 to that.

22 THE COURT: All right.

23 MR. RESTIVO: All right. I want to return then to
24 what we are trying. In addition to the 7 Speights and Runyan
25 claims, we began --

1 THE COURT: Pardon me one second. Ms. Baker tells me
2 that May 10th is not one of those days. Just so you know that
3 day is apparently withdrawn. That's a travel day for me.

4 MR. RESTIVO: Okay.

5 THE COURT: So May 8th or 9th but not the 10th.

6 MR. RESTIVO: Seven, 8, and 9. I apologize, Your
7 Honor.

8 THE COURT: Seventh. Okay.

9 MR. SPEIGHTS: And, Your Honor, Mr. Restivo is
10 essentially correct. Of course, our position is that we won't
11 have to have that trial date, because they, Grace, is not
12 permitted to argue those objections.

13 THE COURT: You're saying Grace can't argue the
14 objection?

15 MR. SPEIGHTS: The objections -- our position is is -
16 - and I think Mr. Restivo stated it correctly. Our position is
17 that Grace did not object to those claims in its omnibus
18 objection nor in the list attached to the October, 2006 CNO,
19 and that's the issue that Mr. Restivo suggests that we argue
20 next week to decide whether we -- whether Grace can go forward
21 on May 9 or whatever date suits Your Honor.

22 THE COURT: Right. Okay. Yes, I understand.

23 MR. RESTIVO: We started, Your Honor, with two Motley
24 Rice buildings, which we were going to try on product I.D.
25 objections. In discussions this week Grace has withdrawn the

1 objection on building number 3406, and so that's one building
2 from Motley Rice that will be subject to the trial next week.

3 The third group of cases in order are the Hahn and
4 Hessen California claims. There are still 16 of those, and so
5 they will be the subject of the trial next week.

6 Lastly, we started with 20 Speights and Runyan U.S.
7 claims to be tried. As a result of our agreement to defer
8 three of those claims in the Court's expungement order of April
9 17 with respect to the authority issue, there are only two U.S.
10 claims that will be tried next week. And so I believe at most,
11 because again Mr. Speights and I are going to be talking later
12 today, we have 24 claims to be tried plus three miscellaneous
13 claims which started out as four this week. We agreed to
14 withdraw the objection with respect to the City of
15 Philadelphia.

16 So what began as I believe about 85 claims is down to
17 about 25 claims, and we think this is going to go pretty
18 quickly next week.

19 A question for Your Honor is that in your volumes now
20 you have three volumes which contain not only the general
21 filings by Grace but also many exhibits and material relating
22 to the Speights and Runyan claims which are no longer going to
23 be tried. If the Court so desires, we believe those three
24 volumes can be reduced to a single volume, so the Court does
25 not have to page through exhibits that are no longer pertinent,

1 because the case has been expunged or isn't being tried. It's
2 purely up to the Court on that.

3 THE COURT: Well, I guess it doesn't really matter.
4 I mean, as an evidentiary matter, if things are going to go up
5 on appeal, it might be easier for an Appellate Court to have
6 one volume rather than three, but it depends on whether you
7 want to take the time to put it all together. I'm not going to
8 sort through those volumes and try to take out exhibits and put
9 them in the one. I can tell you I'll just bring them -- you
10 know, the six volumes back. If you want to have a trial binder
11 here that just has one, that may make it easier both for me and
12 for the witnesses.

13 MR. RESTIVO: I think we will do that then, Your
14 Honor.

15 THE COURT: Okay.

16 MR. RESTIVO: Your Honor, you have a motion in the
17 pleadings that I believe we've resolved, and we don't have to
18 worry about, but let me address it, and we will find out. You
19 have a motion asking for the permission to have telephonic
20 testimony of Mr. Hood and Mr. Conner in the Hahn and Hessen
21 California claims. Subject to one caveat, I have indicated to
22 those attorneys that we have no objection to those individuals
23 who have declarations being available for cross examination by
24 telephone. The only caveat I have discussed with counsel is
25 that I may have a few exhibits I want to use in cross

1 examination, and I realize I will have to provide them in
2 advance of my cross examination to counsel, but I want a
3 commitment from counsel that whatever I provide they will have
4 in front of the witness, so that I can use the documents in my
5 cross.

6 THE COURT: Is somebody present for Hahn and Hessen?

7 MR. MANDELSBERG: Yes. Yes, Your Honor. Steven
8 Mandelsberg from Hahn and Hessen. We represent the State of
9 California, Department of General Services, in connection with
10 the 16 claims that Mr. Restivo refers to. A couple of
11 comments.

12 One, Mr. Restivo is correct. He and I did discuss
13 resolution of this motion. I believe he had mentioned that he
14 had one exhibit, but more than one exhibit, we certainly don't
15 object to that.

16 The only caveat I attach to that is that the document
17 be provided to us sufficiently in advance, so that we can
18 provide it to the two witnesses to the extent they're going to
19 be used.

20 And, second, that we have some indication -- and I
21 realize that it's somewhat of a moving target in lieu of the
22 reduction of claims this morning -- some indication of when
23 these two witnesses would be examined, and I don't know whether
24 that will be Monday afternoon or Tuesday morning. But with
25 that, we have no problem with providing the documents to Mr.

1 Hood and Mr. Conner in advance and making sure that they're
2 available when W.R. Grace's counsel questions them.

3 The other comment I make is as to Mr. Restivo's
4 summary of the claims to be tried. He and I did have a
5 conversation yesterday about to what extent any objections to
6 the Department of General Services claims might be withdrawn
7 given the disclosures that we've made, and I didn't hear a
8 response other than this morning.

9 I don't know whether there will be any further
10 discussions, but the Court should be aware that we did try to
11 participate in a dialogue aimed at resolving or eliminating the
12 need to try those objections. But if the thrust of Mr.
13 Restivo's comment today is that they're going forward with
14 those objections, I guess I will take that as the response that
15 W.R. Grace is going forward with those objections. They're not
16 interested in resolving them.

17 MR. RESTIVO: I didn't -- everything he says is
18 correct, Your Honor. I did have a discussion with Mr. -- with
19 counsel. I did promise counsel I would get back to him on
20 that. I am going to get back to him on that. I forgot that I
21 had that conversation, but I did not mean to suggest that we've
22 closed the lines of communication. I just haven't had a chance
23 to look at his claims yet, and I am going to get back to him.
24 And so the 16 Hahn and Hessen claims is the most we will be
25 trying. That number may also be reduced after I can look at

1 the claims and have a discussion with him.

2 THE COURT: All right.

3 MR. MANDELSBERG: Yes, that's fine, Your Honor. I
4 wasn't meaning -- I know Mr. Restivo and everyone has a lot on
5 their plate. I was just trying to get the clarification which
6 Mr. Restivo has now provided, so that's fine with us.

7 MR. RESTIVO: In terms of the question raised, my
8 next point is the time for trial. Absent some extraordinary
9 long cross examination or some other issues, our best estimate,
10 Your Honor, is that we believe we will finish our case in chief
11 on Monday probably around 3:00 or 4:00. I understand that -- I
12 recall the Court has to be out of this courthouse around five.
13 We don't think we're going to go until five. We think we'll
14 probably end up earlier than that. Our best estimate now is
15 3:00 to 4:00.

16 To that end, the next -- the first group on the
17 plaintiff's side is the Canadian claims of Speights and Runyan,
18 so it would seem to me these two telephonic witnesses we could
19 safely tell them we're looking for you to be on the telephone
20 Tuesday morning based upon our best estimate as to what's going
21 to go on on Monday.

22 MR. MANDELSBERG: This is Steven Mandelsberg again
23 from Hahn and Hessen. That's fine. I just would ask that
24 given the three-hour time difference from where these witnesses
25 will be testifying in California, that to the extent there is,

1 you know, a time frame that can be relayed to us some time no
2 later than Monday, that would I think facilitate their
3 testimony and avoid unnecessary delays or lapses.

4 THE COURT: I don't expect unnecessary delays. If
5 they're going to be available by telephone, they don't have to
6 travel to Pittsburgh to have this hearing. So I suspect that
7 they will be available regardless of the time. But having said
8 that, Mr. Speights, how long do you think your case will take?

9 MR. SPEIGHTS: I only have one live witness, Your
10 Honor, and that's Dr. Pinchin who's coming from Canada. I had
11 anticipated putting him on the first thing Tuesday morning,
12 because I had anticipated Mr. Restivo taking all day Monday,
13 and I understand now Mr. Restivo would like for me to start on
14 Monday afternoon. Well, that -- I would prefer it not be that
15 way. If that's the way it has to be, it has to be. To get
16 back to your question, I would think my direct of Dr. Pinchin
17 would less than an hour.

18 THE COURT: Well, would it accommodate everyone if we
19 simply take then perhaps these two witnesses by phone late
20 Monday afternoon and start with Dr. Pinchin Tuesday morning?

21 MR. SPEIGHTS: That probably would suit me better,
22 Your Honor.

23 MR. RESTIVO: And it's okay with the debtors, Your
24 Honor.

25 MR. MANDELSBERG: Your Honor, Steven Mandelsberg

1 again. That I think would be fine with us.

2 THE COURT: Okay. The only caveat, Mr. Mandelsberg,
3 I do have my review class for my law school exam on Monday, so
4 I -- at 5:00 on -- eastern time on Monday I do have to leave,
5 because my class is reliant on the fact that I'm going to show
6 up at six, so that they can all ace this exam. And I've
7 promised that I will do my best to help them ace this exam, so
8 I have to be there by six. So I do have to leave the bench at
9 five. So I'm happy to --

10 MR. MANDELSBERG: Understood, Your Honor.

11 THE COURT: All right. I'm happy to start with them
12 as soon as Mr. Restivo's case is finished, but at 5:00
13 literally we will be stopping. And we if we need to continue
14 their testimony until the next day, that's what will have to
15 happen.

16 MR. MANDELSBERG: Understood, Your Honor. I wouldn't
17 want your students to get a short shrift with their professor.

18 THE COURT: They don't either. Okay, so that's what
19 they'll do then. We'll -- Mr. -- Dr. Pinchin can start on
20 Tuesday morning when we finish with the witnesses. We'll take
21 these two witnesses Monday afternoon, and I believe we ought to
22 be able to accommodate them to the point where we can start
23 them after Dr. Pinchin's testimony, too, if we need to. I
24 don't really see any reason why we need to make them, despite
25 my statement, to have to get up at five in the morning or six

1 in the morning. So I think we can make sure that they're not
2 on the stand before something like 9:00 California time.

3 MR. MANDELSBERG: Thank you, Your Honor. That's very
4 considerate.

5 THE COURT: Okay, so the order then will be -- which
6 witness are you going to put on first, Mr. Hood or Mr. Conner?

7 MR. MANDELSBERG: I believe it will be Mr. Hood.

8 THE COURT: All right, so we'll start with Mr. Hood.
9 Then if we get that far, it will be Mr. Conner. Those -- they
10 will be Monday afternoon. We will start with Dr. Pinchin first
11 thing Tuesday morning. After Dr. Pinchin, if we need to get
12 back to Hood or Conner, we will do that. That's the order in
13 which that will proceed, and then you folks can address the
14 rest of the witnesses at your convenience.

15 MR. RESTIVO: And, Mr. Mandelsberg, if I e-mail to
16 you or PDF to you whatever exhibits -- and there will be one,
17 two, or three. It won't be many -- first thing in the morning,
18 does that give you sufficient time to get it in front of the
19 witnesses?

20 MR. MANDELSBERG: You mean first thing tomorrow
21 morning?

22 MR. RESTIVO: Yes.

23 MR. MANDELSBERG: Tomorrow morning?

24 MR. RESTIVO: Yes.

25 MR. MANDELSBERG: Yes, I think that should be fine.

1 MR. RESTIVO: Okay. The next topic, Your --

2 THE COURT: Excuse me. Does anybody have an
3 objection to this telephonic -- because I know that the
4 objections are not due until late this afternoon, but I assume
5 it's probably only the debtor that will have one. But since
6 everyone else is on the phone, let me make sure that no one
7 else has an objection to the telephonic testimony of these
8 witnesses.

9 (No verbal response)

10 THE COURT: All right. No one does, so they'll be
11 permitted to testify then by phone. Okay. Go ahead, Mr.
12 Restivo. I'm sorry.

13 MR. RESTIVO: My next topic, Your Honor, is
14 objections to exhibits. The Court has in its court books
15 exhibits and objections to exhibits and lists of objections to
16 exhibits. We have indicated to at least some of the attorneys
17 that we are going to be in contact with them to talk about the
18 exhibits and the objections to exhibits. My sense is that
19 everyone's hope is that we were all overprotective on
20 objections, and, hopefully, we will be able to resolve
21 objections to introduction of many of those exhibits. And so
22 our thinking is most of that is going to go away before we
23 start on Monday. But again we haven't had those discussions
24 yet, but we're going to have them.

25 Next, Your Honor, I think we have an understanding.

1 Some people formally responded. Some did not formally respond.
2 We had suggested to the parties that in light of the work
3 everyone was doing on product identification that there be a
4 two-week deferral on the filings that were to have been made on
5 Monday with respect to the no hazard hearing. The witness list
6 and the exhibits. I think everyone is in agreement that that
7 makes sense. In any event, to our knowledge, no one found
8 anything on the no hazard hearing, and so I believe that the no
9 hazard filings that otherwise would've been due on Monday will
10 now be filed on Monday, April 30th.

11 THE COURT: Okay. I thought I issued a stay of any
12 filings until we get through the product I.D. hearing, and we
13 said that we would take those issues up after the trial
14 concludes. The reality is that I am still working my way
15 through these statute of limitations issues, and, quite
16 frankly, I don't think I'm going to get them done, even by
17 these May 8th dates. I'm hoping to get some done. I'm not
18 going to have them all finished by then. I just -- I don't
19 think realistically I'm going to have them done by then.

20 MR. RESTIVO: The debtor has no problem, Your Honor,
21 with deferral of that issue until the parties and the Court
22 come back to it on scheduling. What we were concerned about is
23 the calendar had something due on Monday, and we hadn't even
24 thought about the no hazard filings yet. And so we wanted to
25 make sure everyone agreed it would kick that off.

1 THE COURT: Yes, I don't see any basis -- or any
2 reason, I should say, not basis. I don't see any reason to
3 have anybody file anything more until we work out a schedule
4 that makes sense for everybody. But why don't you continue to
5 work through the product I.D. issues, and let's discuss that at
6 the conclusion of the product I.D. trials, whenever that is
7 next week, and set a schedule? I think maybe that will give
8 both my law clerks and me and also all of you a bit more time
9 to focus on that specific issue. And if we can't address it
10 then, we can certainly take it up at the next omnibus in May,
11 because that will -- I think by then we'll all at least have
12 been through this product I.D. issue and probably have a little
13 more time to concentrate on the no hazard issues.

14 MR. RESTIVO: Next to last, Your Honor, I guess is a
15 housekeeping matter. Obviously for omnibus hearings and status
16 conferences there is a call-in number. Other than the two
17 witnesses we've talked about, the debtor did not anticipate the
18 trial taking place telephonically and having people participate
19 by telephone, but we're not quite sure what the Court's
20 procedure is in evidentiary hearings.

21 THE COURT: I've never conceived of an evidentiary
22 hearing by phone, so I -- I'm willing to do it to the extent
23 that you folks are agreeable to have this happen given the
24 circumstances where there are I guess lay witnesses who may
25 have to travel and there is some great expense. My -- I think

1 for the most part, however, we do have video conference
2 capabilities available across the country, and if nothing else,
3 we ought to at least be able to set up video conferences. To
4 the extent that you've got experts, I want them either here,
5 because there's going to be showing documents and looking at
6 things, and if there's an issue, I want to make sure that there
7 is some clear indication of what they're looking at, and I'm
8 seeing what they're looking at, so either by video where it can
9 be clear or here.

10 To the extent that there are lay witnesses and we can
11 do it by video, that would be my preference. If you don't have
12 an objection to telephone, that's all right with me under the
13 circumstances. I don't think most -- I don't think it's the
14 witness credibility that's really at issue so much here as it
15 is the documentation and the paper trail and that sort of
16 thing. So it's all right. I'm not thrilled, but --

17 MR. RESTIVO: I think I probably misspoke. I think
18 the parties are okay with the two witnesses participating
19 telephonically. I should specifically reference on the omnibus
20 hearings we always have 20, 30, 40, 50 people on the call-in
21 line, and the debtor at least did not contemplate that we would
22 have that, because we don't think they can participate. We
23 don't know what --

24 THE COURT: Oh, you're talking about --

25 MR. RESTIVO: -- how it works for a hearing.

1 THE COURT: -- the omnibus hearings.

2 MR. RESTIVO: No, for the trial Monday, Tuesday, and
3 Wednesday, do we need to set up a call-in line?

4 THE COURT: Oh, so that pro se people --

5 MR. RESTIVO: No, so that the attorneys representing
6 whoever, insurance -- whatever attorneys are normally on the
7 call-in list for the Grace omnibus hearings --

8 THE COURT: Oh.

9 MR. RESTIVO: -- which is 30/40 people.

10 THE COURT: No, if they're going to participate in a
11 trial, they need to be here for the trial. I don't see how
12 you're going to ask questions or participate in something by
13 phone. No, it's --

14 MR. RESTIVO: That was the point I was making.

15 THE COURT: It's like a plan confirmation hearing.
16 When there's a real contested evidentiary matter going forward,
17 that has to take place in the courtroom. I just don't see a
18 way around that.

19 MR. RESTIVO: And we -- that is our position.

20 THE COURT: Now, I am willing, as I said, if there
21 can be a video conference station somewhere that people want to
22 take advantage of and we can set up a video process, I'm
23 willing to try to do that. We can do at least one video,
24 sometimes two, video hook ups, but we're -- I don't think
25 that's going to work between now and Monday. We'd have to make

1 those arrangements well in advance.

2 MR. RESTIVO: Lastly, Your Honor, I would come back
3 to whether or not the Court and Mr. Speights thinks that on
4 this issue of whether we can raise product I.D. or whether we
5 have waived it, whether or not we can make our arguments to the
6 Court on that issue with the available time I now think we will
7 have, either at the end of the day on Tuesday next week or
8 beginning of the day Wednesday, since we're not going to need
9 that for trial time, since I believe we're going to be done.

10 THE COURT: That's all right with me. Mr. Speights,
11 will you be prepared by then?

12 MR. SPEIGHTS: Yes, Your Honor, but let me just
13 clarify a couple of issues there. First of all, I filed a
14 motion to extend the deadlines to protect us on this issue
15 until Grace actually filed its list of claims which would be
16 adjudicated this week. And I told Mr. Restivo that once that
17 came in, I was prepared to file a motion to strike from the
18 trial roster which claims which Grace had not objected to back
19 in 2005 and 2006. Mr. Restivo then instructively suggested
20 let's don't let that get us bogged down this week. We have
21 these days in May to deal with whether we can or cannot go
22 forward on those claims.

23 I want to -- and I have -- and I agree with Mr.
24 Restivo that he and I can argue this matter to Your Honor. And
25 next Tuesday afternoon or Wednesday morning I'd like to talk to

1 Mr. Restivo a few minutes after the hearing to see which one
2 would be better, but one of those two times would be an
3 appropriate time to argue that matter.

4 I do want to say though, Your Honor, while I am
5 confident of my position -- and we addressed it somewhat at the
6 last summary judgment hearing -- in the event that you should
7 not agree with me, part of my argument will be that we did not
8 serve discovery on those claims which they did not object to,
9 and, therefore, we have a short period of time between next
10 Tuesday or Wednesday and May 8 or 9 or whatever the date is.
11 I'm perfectly happy to work with Mr. Restivo in the event that
12 we have to do that discovery, but I didn't want the record to
13 be silent to suggest that if Your Honor rules against me next
14 week, we just automatically would be ready for trial on May 8
15 or 9 or whatever that date is.

16 THE COURT: Well, I think, Mr. Speights, to the
17 extent that you may need discovery, if the debtor has not filed
18 the specific objection to the claim, and debtor -- and if the
19 Court finds that the debtor hasn't waived that claim for all
20 time, then probably the best thing to do is to have the debtor
21 articulate in writing the nature of the objection, give you
22 some short period of time for discovery and set a trial date,
23 because you're deferring those claims anyway. So I mean, you
24 know, I think --

25 MR. SPEIGHTS: Which is fine.

1 MR. RESTIVO: Your Honor, with all due respect, I
2 think we're sliding a little bit into argument on the merits
3 that we ought to address next week. You will hear from our
4 side our position that we believe these claims were identified
5 in Dr. Lee's report, have been the subject of the deposition of
6 Dr Pinchin. That in terms of -- there's no surprise on this.
7 These have been on the list. I understand Mr. Speights'
8 argument. We'll have to argue about it, but I wouldn't want to
9 prematurely talk about what discovery may be needed until we
10 are permitted to give our position that we think there's been
11 discovery already.

12 THE COURT: No, I'm not -- what I'm trying to do, Mr.
13 Restivo, is make sure that if, in fact, there hasn't been some
14 articulated objection, that we get the record straight, so
15 there is an articulated objection, because it seems to me it's
16 just a lot easier for any other court -- well, it's even easier
17 for me looking at what the nature of the objection is to
18 understand it quite clearly. This is the objection. This is
19 the response. This is the contested issue and move on from
20 there. So that's all I was suggesting. That if there is some
21 dispute as to what the objection is, it's just easier to start
22 it from what the nature of the objection is and to go forward
23 from there. I'm not prejudging the issue. I've seen the
24 objection that Mr. Speights has raised, and that's all I've
25 seen so far. So --

1 MR. RESTIVO: I understand, Your Honor. I believe
2 that's all the debtors have with respect to reporting or
3 telling the Court where we think we are.

4 THE COURT: All right. Well, then, Mr. Speights,
5 we'll do the argument on the waiver issue whenever the evidence
6 closes on the trial. So we'll do it next week but exactly
7 when, I don't know. We'll just reserve that issue for when the
8 evidence is closed at the -- so we'll do it at the end of the
9 evidentiary matters.

10 MR. SPEIGHTS: Thank you, Your Honor.

11 THE COURT: All right. The debtor has nothing else,
12 so let's start with you, Mr. Speights. I there anything from a
13 -- the trial standpoint that you want to discuss?

14 MR. SPEIGHTS: No, Your Honor.

15 THE COURT: Okay. For -- who was next? For Motley
16 Rice, Ms. Kearse?

17 MS. KEARSE: Yes, Your Honor. I do have a motion
18 pending regarding Dr. Lee's testimony, and then also to see
19 what the fact witnesses -- on how they're relevant to my
20 particular claim. What I would like to do so I'm down to one
21 claim, Your Honor, is get with counsel, so that I'm clear on
22 where they're going with that expect to see if it's actually
23 relevant to my claim or not and reserve the right, Your Honor,
24 before Dr. Lee would take the stand that we may have to bring
25 up an issue with you. But there are motions and responses

1 filed to that testimony, Your Honor.

2 THE COURT: I don't remember seeing in these binders
3 that I just had delivered a motion concerning Dr. Lee's
4 testimony or any response. Did I somehow miss it?

5 MS. KEARSE: Your Honor, I don't know if it was put
6 in the binders. There is a motion in limine and a reply from
7 the debtors and then a reply from us to their motion. And I do
8 -- since it was dealing with a number of claims when it was
9 originally written, I do want to see how it -- I'm down to one
10 claim, Your Honor, and I do want to talk with counsel on that
11 claim. Still optimistic.

12 THE COURT: All right. Well, if it isn't resolved,
13 then I need someone to do I think a supplemental binder,
14 because I don't think I missed it. We were supposed to get
15 them yesterday. That was what was delivered to the house, and
16 there's nothing in it about a motion in limine in those either.

17 MR. RESTIVO: Your Honor, in the supplemental index I
18 believe delivered yesterday at Tab Number 5 is Motley Rice
19 claimant's 3406 and 6941 objections to debtors' Exhibit 44, 45,
20 and proposed testimony of Lee and Tieney (phonetic) and Egan
21 (phonetic). Is that, Ms. Kearse, the motion, or is the motion
22 styled something different?

23 MS. KEARSE: I think in that response I refer to the
24 motions that were filed when we had the deadline of filing
25 motions in limine, and I did file a motion in limine, and I

1 refer to it in those responses. We may have attached it. I'm
2 not sure.

3 MR. RESTIVO: We will -- I believe the motions should
4 be in the books. It looks to me like maybe they aren't. We
5 will give the Court a supplemental, and we apologize that it's
6 not in the books.

7 THE COURT: All right. I am catching -- I'm leaving
8 the office at 1:00 to catch a plane, so I need either the
9 docket number references, so I can print them and take them
10 with me, or I need something else before 1:00.

11 MR. RESTIVO: We'll have them hand-delivered, Your
12 Honor.

13 THE COURT: Okay. All right, Ms. Kearse, I'll get
14 that and take a look at those over the weekend. Mr.
15 Mandelsberg for Hahn and Hessen.

16 MR. MANDELSBERG: Yes, Your Honor. The only other
17 item besides the two that were mentioned before, namely, the
18 audio testimony of Messrs. Hood and Conner and the discussion
19 that I will have with W.R. Grace's counsel about possible
20 resolution or withdrawal of objections to some claims is the
21 State of California's objection by our April 17 submission,
22 which I trust you do have, to W.R. Grace's two proposed fact
23 witnesses, Messrs. Sintomi (phonetic) and Egan. But rather
24 than argue this, we did not make a motion, but we indicated our
25 objection. Rather than address this now, I suggest that

1 perhaps it can be the subject of the discussion that we'll have
2 with W.R. Grace's counsel about the claims themselves, and
3 perhaps we'll be able to resolve this. If we don't, then
4 obviously, we'll address it at the hearing.

5 But our objection, which I trust the Court has,
6 indicates the basis for our objections to these witnesses
7 against the State being predicated upon other things they're
8 not having been disclosed by W.R. Grace in discovery responses.
9 But we can -- as I say, we expect to discuss this with W.R.
10 Grace's counsel.

11 THE COURT: Okay.

12 MR. MANDELSBERG: -- either today or tomorrow.

13 THE COURT: I saw some objection by the State of
14 California. But I do not remember seeing a specific objection
15 to those two witnesses, but perhaps there was something in the
16 binders that I'm forgetting at the moment. I would have to
17 go --

18 MR. MANDELSBERG: We -- Your Honor, we can arrange to
19 have another copy, but we did serve by before noon on April 17,
20 on Tuesday -- and I believe everyone has gotten this -- our
21 document entitled Objections to -- of Claimant's State of
22 California, Department of General Services to Debtors' Exhibits
23 and Witnesses Designated --

24 THE COURT: Okay.

25 MR. MANDELSBERG: -- for the Product Identification

1 Trial.

2 THE COURT: I haven't been through all of the
3 supplemental binders. I just got them at home last night, and
4 I just got home last night from being out of town, and I'm not
5 through all of those documents. And I believe I saw them, but
6 I don't think I finished reading them. I don't remember seeing
7 Ms. Kearse's at all, but I do remember seeing the State of
8 California's. I think I just haven't read them yet.

9 MR. RESTIVO: You do have that one, Your Honor. It's
10 in the supplemental index at Tab Number 6.

11 THE COURT: Okay, then I will be --

12 MR. MANDELSBERG: Yes.

13 THE COURT: I have them packed. I'll be reading them
14 on the plane.

15 MR. MANDELSBERG: Very good. It's a short document,
16 Your Honor. It's four pages, and it sets forth the claimants
17 -- the State's objections to the debtors' exhibits in Part A
18 and in Part B, the State's objections to these two witnesses.

19 THE COURT: Okay.

20 MR. MANDELSBERG: So I think just reading that will
21 give you the grounds for the State's objection. But, as I say,
22 we expect to discuss that with W.R. Grace's counsel soon.

23 THE COURT: All right. Thank you. Anyone for any of
24 the independent claimants, first Wittenberg?

25 (No verbal response)

1 THE COURT: Johnson?

2 (No verbal response)

3 THE COURT: First Presbyterian?

4 (No verbal response)

5 THE COURT: Okay. Mr. Speights, I want to make sure
6 I didn't defer or bypass you on the U.S. claims.

7 MR. SPEIGHTS: I have nothing to bring up to the
8 Court on those either, Your Honor.

9 THE COURT: Okay. Okay, then I guess if there's
10 nothing else, I'll see you April 23rd, and we'll begin.

11 I guess, Mr. Restivo, what may be helpful that
12 morning is if you will just do the same thing you did for me
13 now. If you've managed to either resolve some additional
14 claims, just to give me an update as to the order in which
15 you're going to go forward. And, frankly, since I have all of
16 the exhibits anyway, if you are going to either withdraw some
17 additional objections to claims, or if some of the other claims
18 are withdrawn, or you've settled them, if you just don't bother
19 putting those additional exhibits into the binders that you're
20 going to be bringing, that will I think eliminate some
21 additional work by both your staff and mine.

22 MR. RESTIVO: I will do so, Your Honor.

23 THE COURT: Okay. We'll see you Monday then.

24 MR. RESTIVO: Thank you, Your Honor.

25 THE COURT: Thank you. We're --

1 MR. MANDELSBERG: Thank you, Your Honor.

2 THE COURT: Thank you. We're adjourned.

3 * * * * *

4 **CERTIFICATION**

5 I, PATRICIA C. REPKO, court approved transcriber,
6 certify that the foregoing is a correct transcript from the
7 official electronic sound recording of the proceedings in the
8 above-entitled matter to the best of my ability.

9
10 /s/ Patricia C. Repko
11 PATRICIA C. REPKO
12 J&J COURT TRANSCRIBERS, INC.

Date: April 23, 2007